

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8407 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
DEVESHBHAI INDRAVADAN MEHTA

Versus

DAMNAGAR GRAM PANCHAYAT & ANR.

-----  
Appearance:

None present for Petitioner

MR YS LAKHANI for Respondent No. 1

MR DA BAMBHANIA for Respondent No. 2

-----  
CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/09/96

ORAL JUDGMENT

The matter was called out for hearing in the first round, then in the second round and lastly in the third round, but nobody is present on behalf of the petitioner. Heard learned counsel for the respondents and perused the file.

2. The learned counsel for the respondents contended that this Special Civil Application is wholly misconceived and the petitioner, if we consider that demolition of cabin temporarily built by the respondent is illegal, then he could have filed a civil suit. It has further been contended that on 26th August 1996, this Court directed the respondent-Damnagar Gram Panchayat to give a fresh look to the matter. The petitioner was directed to approach to the Gram Panchayat by way of a representation within a period of 10 days from today, i.e. 26.8.96. It has further been directed that if such a representation is filed, the same shall be disposed of within a period of one months thereafter. Shri Lakhani, the learned counsel for the respondent No.1 states before this Court, on instructions from the Secretary of Gram Panchayat who is also present in the Court that the petitioner has not moved any application. This is another ground on which Shri Lakhani contends that this Special Civil Application deserves to be dismissed.

3. I have given my thoughtful considerations to the submissions made by the learned counsel for the respondents. The petitioner has come up with the case that on 1st August 1994, he applied for a piece of land admeasuring 12 ft. x 14 ft. to the respondent No.1. On 11.10.94, the respondent No.1, after considering the application of the petitioner, vide Resolution No.68, dated 11.10.94, decided to grant said piece of land on lease on a deposit of Rs.1,000/- and fixing Rs.50/- p.m. as rent of said land. The petitioner has further stated that on 1.11.94, the possession of the piece of said land was given to him by respondent No.1. On 6.12.94, the petitioner stated in Special Civil Application, that the respondent No.1 Panchayat, without giving notice or opportunity of hearing to the petitioner, demolished the cabin (temporarily built) of the petitioner and has taken away costly materials stored by the petitioner. The respondent No.1 has filed reply to this Special Civil Application to which no rejoinder has been filed by the petitioner. The respondent No.1 has come up with the case that under the Resolution dated 11.10.94, it has been resolved to let to the petitioner space of 10' x 8' to instal a wooden cabin on the payment of Rs.75/- p.m. with a deposit of Rs.1,000/-. The respondent No.1 had denied that the possession of the land has been given to the petitioner on 1.11.94. The respondent has categorically made a statement that the possession of the said land was never handed over to the petitioner. It is case of respondent No.1 that the petitioner himself has started 'Pucca' construction on much wider piece of land just adjoining to the compound wall of the post office of

Damnagar and therefore the Sub-Post Master of Damnagar made a written complaint to the Panchayat against the petitioner on 3.12.94. On 5.12.94, the Panchayat had given a written notice to the petitioner to remove construction of Cabin as the petitioner has committed a breach of condition. In the said notice, it was specifically mentioned that if the petitioner fails to remove the same, the Panchayat will be constrained to remove the same even in the absence of the petitioner. The petitioner, despite of receipt of aforesaid notice, did not remove illegal construction and therefore the Panchayat was constrained to remove the said 'Pucca' construction on 7.12.94 by drawing Panch Rojkam. Vide Resolution No.89 passed on 5.12.94, the decision of giving said piece of land on lease at a monthly rent was cancelled and it was resolved to return the deposit. After removal of the construction, the petitioner moved an application on 8.12.94 for returning his articles seized. The Panchayat thereupon wrote a letter to the petitioner dated 9.12.94 that the articles mentioned in the letter are not in fact found, but only few pieces of bricks, certain galvanized sheets and other iron scrap was found and seized and the same are lying in the store compound of the High School in possession of the Panchayat and it was informed to the petitioner that after appropriate orders are passed by the administrator, the same shall be returned to him. Under the letter dated 20.12.94, the petitioner was asked to get back the amount of Rs.1,000/-.

4. In the above facts and circumstances, I am satisfied that this writ petition is wholly misconceived. This petition is filed by the petitioner on 27th September 1995 and delay in approaching this Court is also not explained. The petitioner has concealed material fact that a notice was given to him for removal of construction put by him on the said land. He further deliberately made a wrong statement of fact that the land admeasuring 12' x 14' has been let out at a monthly rent of Rs.50/-. On the contrary, the land admeasuring 10' x 8' has been given on the monthly rent of Rs.75/-. It is a case where the land in question has been granted only to put a wooden cabin, but the petitioner arbitrarily started to raise 'Pucca' construction. The petitioner further concealed the fact that he himself moved an application to the Gram Panchayat for return of the articles seized. He has further concealed the fact that the Gram Panchayat, under its letter, asked him to take back the amount of Rs.1,000/- deposited by him. These are all material facts which have been concealed by the petitioner and secondly the petitioner made a deliberate

false statement. On all these grounds, this writ petition deserves to be dismissed. The matter is not ended here. The petitioner has, though given permission for putting a wooden cabin, started to raise 'Pucca' construction and this is certainly a serious matter on which action has been taken for demolition of the said construction. The Panchayat has also rightly passed a Resolution to cancel its earlier Resolution to let out the said land to the petitioner. The petitioner has conveniently concealed the fact that under the Resolution No.89 dated 5.12.94, the previous Resolution of Gram Panchayat has been cancelled.

5. Taking into consideration these facts, I do not find any substance in this Special Civil Application. Apart from this liberty has also been given by this Court to the petitioner to file an application before the Panchayat, but that has not been availed by him. Delay in filing this Special Civil Application before this Court is another factor which goes against the petitioner. Lastly, I find sufficient merits in the contention of learned counsel for the respondent No.1, Shri Lakhani, that if the petitioner considers it to be a case where demolition is made illegally, then proper course is to file suit for damages and not this Special Civil Application as there are many questions of fact which are to be gone into in the matter before the action of the respondents is considered to be illegal and the claim of damages is to be accepted. Apart from this, the Resolution No.89 dated 5.12.94, of the Gram Panchayat, cancelling its earlier Resolution has also not been challenged in this petition also.

6. In the result, this writ petition fails and the same is dismissed. Looking to the fact that the petitioner has made suppression of fact and as this writ petition is wholly misconceived, exemplary cost has to be awarded to the respondent No.1. Order accordingly. The petitioner is directed to pay Rs.1,000/- by way of costs of this petition to the respondent No.1. Rule discharged.

.....

(sunil)